

## **Remarks**

This Amendment After Final is in response to the Office Action dated September 20, 2007. In the Final Office Action, claims 11, 12, 16-18 and 21-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/166572 in view of Gendreau (US 2001/0034608). Claim 11 was objected to because of several informalities. Claims 13-15, 19 and 24 were rejected under 35 USC 112, second paragraph, as being indefinite. Claims 11-26 were rejected under 35 USC 103(a) as being unpatentable over Gendreau (US 2001/0034608) in view of Dlugos et al (US 5878379).

Applicant notes that with this Amendment, Applicant is canceling the priority claim to U.S. application no. 10/166572.

## **Double Patenting**

Claims 11, 12, 16-18 and 21-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/166572 in view of Gendreau (US 2001/0034608). Applicant submits herewith a terminal disclaimer thereby obviating the provisional rejection.

## **Claim Objections**

Claim 11 was objected to because of several informalities. Claim 11 was said to have multiple grammatical/spelling errors such as "sensors being positioned on at last (should be least) an" and "by the package blocking one of (should be or) more of said sensors". Applicant has reviewed the claim and amended it to moot the objection.

Withdrawal of the objections is requested.

## **Claim Rejections - 35 USC 112**

Claims 13-15, 19 and 24 are rejected under 35 USC 112, second paragraph.

The Final Office Action states that:

11. With respect to Claims 13-15 and 19: the independent claim 11 appears to attempt to claim the use of ambient light for the determination of the dimensions of the package. As claimed now, the claim reads that the package merely blocks ambient light, but does not necessarily claim that measuring of ambient light. If the claim were to claim this, then it is unclear what light the sensors measure... the ambient light or the light from the optical signal sources. As stated now the examiner considers the sensors to measure light from the signal sources.

Applicant has amended independent claim 11 to clarify that the width of the package is determined by the package blocking one or more of the sensors positioned along the z axis to create a reduction in the amount of **ambient light** reaching the one or more sensors. At least one of the sensors positioned along the z axis senses the reduction. The optical signal sources referenced in claims 13 and 15 are directed at the optical sensors along the y axis. The light source referenced in claim 19 is located above the z axis sensor(s). As stated in the application as filed on page 14, lines 29-31:

The overhead light source 216 provides a more reliable level of light than would otherwise be provided by ambient light from the general building services.

Thus, the light source contributes to the ambient light.

With regard to claim 24, the Final Office Action states that there is insufficient antecedent basis for 'said detected folds' in line 2 of the claim. Applicant has amended the claim to recite 'said detected fault' thereby mooting the objection.

Withdrawal of the rejections under 35 USC 112 is respectfully requested.

### **Claim Rejections - 35 USC 103**

Claims 11-26 were rejected under 35 USC 103(a) as being unpatentable over Gendreau (US 2001/0034608) in view of Dlugos et al (US 5878379).

Claim 11 and claims dependent therefrom have been amended to positively recite that the width is determined by the package blocking one or more of the sensors positioned along the z axis to create a reduction in the amount of ambient light reaching the one or more sensors. At least one of the sensors positioned along the z axis senses the reduction in ambient light.

Neither Gendreau nor Dlugos disclose this feature. The Final Office Action

acknowledges that Gendreau "fails to disclose the package sizer having a plurality of spaced optical sensors along the y and z axis used to detect the height and width of the package". Dlugos discloses the use of an emitter and a photosensor to detect light from the emitter which is reflected by an adjacent surface to the photosensor. Dlugos' photosensor is not sensing a reduction in ambient light. Rather, it senses an increase in directed, non-ambient light. When a package passes the Dlugos emitter and photosensor, the Dlugos photosensor senses an increase in light due to the reflection of light off of the package.

Therefore, even if the combination of Gendreau and Dlugos is made, the combination fails to teach the recited determination of width based on sensing a reduction in ambient light.

Independent claim 20 and claims dependent therefrom recite "the width being measured by the sensors on said z axis sensing a reduction in ambient light caused by the package blocking said sensors on said z axis." These claims are patentable over the proposed combination of Gendreau and Dlugos for the same reasons discussed above with respect to claim 11 and its dependent claims.

Withdrawal of the obviousness rejection is respectfully requested.

**Conclusion**

It is respectfully submitted that the combination of the cited references fails to make the invention, as amended, obvious. A Notice of Allowance of remaining claims 11-26 is respectfully requested. Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' under signed representative at the telephone number listed below.

Respectfully submitted,

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